APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the
STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FOUR

PETITION FOR CERTIORARI FILED MARCH 22, 1978
CERTIORARI GRANTED MAY 30, 1978

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In the Court of Appeal

State of California

First Appellate District

Division Two

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1 Civ. No. 28689
(Sup.Ct. No. 603599)

DIANE HALL, et al.,

Plaintiffs and Appellants,

vs.

UNIVERSITY OF NEVADA, a corporation, and STATE OF NEVADA,

Defendants and Respondents.

[Filed May 11, 1972]

[Vacated December 21, 1972]

OPINION

We have concluded that, in the absence of express consent to be sued in a foreign jurisdiction, one sovereign state is not subject to the in personam jurisdiction of another. Accordingly, we affirm the trial court's order quashing service of summons and complaint upon respondents University of Nevada and State of Nevada.

Plaintiffs-appellants filed suit in

San Francisco Superior Court to recover damages for personal injuries arising from an accident in California in which their vehicle collided with a car owned by respondents and operated by their agent acting within the scope of his agency. In effecting service of process upon respondents, appellants utilized the California long-arm statute (Veh.Code §§17450-17463) which permits substituted service of summons and complaint upon non-resident motorists.

Appellants concede, as they must, that under the well settled rule neither the state nor any of its agencies enjoying sovereign immunity can be sued unless consent is given to maintain the action against them (Innes v. McColgan (1942) 52 Cal.App.2d 698, 700; McPheeters v. Board of Medical Examiners (1946) 74 Cal.App.2d 46, 49; 45 Cal.Jur.2d, §159, p. 512 et seq.); and that this general prohibition also extends to a tort action brought against the state either in its own courts or those of a sister state (57 Am.Jur.2d, §24, p. 33). They insist, however, that (1) respondents have, by statute, expressly waived immunity, and/or (2) the requisite consent to waive immunity may be given impliedly, and that the operation of the Nevada automobile in California constituted such consent. For the reasons which ensue, we are compelled to reject both contentions.

Appellants' first argument is primarily based on Nevada Revised Statues, section 41.031, which provides in pertinent part that "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against individuals and corporations...." (Emphasis added.)

Appellants' reliance on the cited code section is obviously misplaced. It is evident that the present case is not concerned with the extent and conditions of a potential tort liability to which respondents may be subjected in a proper court, but solely with a jurisdictional issue, namely: whether or not respondents have consented to the jurisdiction of the California court. Therefore, the relevant code section is section 13.025, which, at the time of the accident, read as follows:[1]

"1. Except as provided in subsection 2, any action or proceeding against the State of Nevada, shall be brought in a court of competent jurisdiction in Ormsby County.

"2. Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury occurred." (Emphasis added.)

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[1] In 1969 an act was passed repealing the requirement that actions against the state be brought in Ormsby County. This act, however, brought about only a change that suits against the state can be brought in any county of Nevada, and in no way constituted the required express consent to be sued in other states.

In interpreting the above code section, we adhere to the rule that statutes conferring the right to sue the state, being in derogation of the state's sovereign capacity must be strictly construed (County of Los Angeles v. Riley (1942) 20 Cal.2d 652, 662; Yasunaga v. Stockburger (1941) 43 Cal.App.2d 396, 400-401; 45 Cal.Jur.2d §160, p. 515 et seq.; 57 Am.Jur.2d, §70, p. 80). The statutory language granting consent to such suits must be explicitly and expressly announced (Elizabeth River Tunnel District v. Beecher (1961) 117 S.E.2d 685, 689).

A simple reading of the cited code section persuades us that the statute lacks the required express language to subject respondents to foreign in personam jurisdiction; and, under the foregoing authorities, such jurisdiction may not be established by implication. Our conclusion is further supported by section 228.170(1)[2] of the Nevada Revised Statutes, which specifically requires that suits against the state be brought in Nevada, and by the interpretation of an analogous statute in State Tax Commission v. Kennecott Copper Corp. (1945) 150 F.2d 905 (affd. 327 U.S. 573) where the court held that the statutory phrase of "'any court of competent

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[2] Section 228.170(1) provides that "Whenever the Governor shall direct or in the opinion of the Attorney General to protect and secure the interest of the State, it is necessary that suit be commenced or defended in any court, the Attorney General shall commence such action or make such defense. (2) Such action may be instituted in any district court in the State or in any justice court of the proper county." (Emphasis added.)

jurisdiction'" did not, by implication, include the federal court sitting in the state, because before a state can be subjected to suit "the statute must use language which evidences a clear intent to submit to the jurisdiction of federal courts." (P. 907; emphasis added.)

Additionally, the statutory scheme as a whole leaves no doubt that the emphasized portion of section 13.025 contemplates suits merely within the boundaries of the State of Nevada. This is evidenced by the complete lack of statutory provisions which would set up procedures for out-of-state suits, such as rules for venue, service of process, and other procedural requirements (cf. Ford Co. v. Dept. of Treasury (1945) 323 U.S. 459).

Appellants' second argument is simply an attempt to extend the California long-arm statute.[3]

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[3] The relevant sections of the long-arm statute provide as follows:

"§17451. Service of process on nonresident

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor vehicle anywhere within this state, or in the event the nonresident is the owner of a motor vehicle then by the operation of the vehicle anywhere within this state by any person with his express or implied permission, is equivalent to an appointment by the nonresident of the director or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against the nonresident operator or nonresident owner growing out of

While such an argument has a certain appeal to one's sense of logic, is (sic) begs the fundamental question, i.e., whether one state may legislate away the sovereignty of a sister state.

Clearly it may not, for, as we have seen, state sovereignty may be waived only by a clear and unambiguous statutory enactment of the state Legislature concerned which directs the conditions, mode and manner of the purported waiver (Ford Co. v. Dept. of Treasury, supra; State of California v. Superior Court (1936) 14 Cal.App. 2d 718, 722-723; 81 C.J.S., §214, p. 1304).

Appellants' reliance on People v. Streeper (1957) 145 N.E.2d 625 and State v. Holcomb (1911) 116 P. 25[illegible] is patently misplaced. In each of those cases the dispute revolved around and concerned

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any accident or collision resulting from the operation of any motor vehicle anywhere within this state by himself or agent, which appointment shall also be irrevocable and binding upon his executor or administrator.

"§17453. Agreement on validity of process

"The acceptance of rights and privileges under this code or any operation of a motor vehicle anywhere within this state as specified in Section 17451 shall be a signification of the irrevocable agreement of the nonresident, binding as well upon his executor or administrator, that process against him which is served in the manner provided in this article shall be of the same legal force and validity as if served on him personally in this state."

property located in the forum state (in Streeper injunctive relief was asked, while Holcomb involved the state taxation of property); and in each case the court simply adhered to the long-established principle that a state has in rem jurisdiction over the property located in its territory. In People v. Streeper, supra, the court was eager to point out that where the property of another state is properly before the court, the court will proceed to discharge its duty concerning the property but the state may not be compelled to come in as a party. (Pp. 630-631.)

Although no exact case has been presented to us nor have we found any, the closest in point is Paulus v. State of South Dakota (1924) 201 N.W. 867. In that case defendant South Dakota owned and operated a coal mine in North Dakota. Plaintiff, a mine employee, suffered personal injuries and sued South Dakota in the court of North Dakota, contending that, by owning and operating the coal mine in North Dakota, defendant South Dakota impliedly waived its sovereignty and thereby consented to the jurisdiction of North Dakota.

Concluding that South Dakota could not, without its express consent, be sued in North Dakota, the court held that considerations of comity impelled it to refrain from exercising jurisdiction. The same considerations apply to the case at bar.

The order is affirmed.

Certified for Publication

Kane, J.

We concur:
Taylor, P. J.
Rouse, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DIANE HALL, JOHN M. HALL, JOYCE HALL, et al., Plaintiffs, v. MATTHEW M. FISHGOLD, as Administrator of the ESTATE OF HELMUT KURT BOHM, deceased, Defendants.	DEFENDANTS UNIVERSITY OF NEVADA'S AND STATE OF NEVADA'S RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSION OF FACTS (SET ONE -- AMENDED)
DIANE HALL, JOHN M. HALL, JOYCE HALL, et al., Plaintiffs, v. UNIVERSITY OF NEVADA, et al., Defendants.	Nos. 433481 & 470584-8 (CONSOLIDATED)

Responses are made by defendants UNIVERSITY OF NEVADA and STATE OF NEVADA to plaintiffs' Requests for Admission of Facts (Set One -- Amended) as follows:

1. On the 13th day of May, 1968, HELMUT KURT BOHM was an employee of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

2. That HELMUT KURT BOHM was on the 13th day of May, 1968, a technical assistant in the Anatomy department of the UNIVERSITY OF NEVADA.

RESPONSE: It is admitted that Mr. Bohm was, on the 13th day of May, 1968, employed in the Anatomy Department of the University of Nevada in a position in the nature of a curator. All else is denied.

3. That on the 13th day of May, 1968, HELMUT KURT BOHM obtained a 1968 Chevrolet automobile, bearing license number (E) 781 Nevada from the UNIVERSITY OF NEVADA Motor Pool.

RESPONSE: Admitted.

4. That said vehicle was obtained by HELMUT KURT BOHM through a requisition from the Anatomy Department of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

5. That on the 13th day of May, 1968, HELMUT KURT BOHM used the above described 1968 Chevrolet to drive to Sacramento, having been directed in connection with his employment at the UNIVERSITY OF NEVADA, to go to Sacramento to pick up some television parts for the UNIVERSITY.

RESPONSE: It is admitted that on the 13th day of May, 1968, HELMUT KURT BOHM used the above described 1968 Chevrolet to drive to Sacramento, having been given

permission in connection with his employment at the UNIVERSITY OF NEVADA, to go to Sacramento to pick up some television parts for the UNIVERSITY.

6. That on the 13th day of May, 1968, at the time the accident occurred which is the subject of this suit, HELMUT KURT BOHM was returning to Nevada in the 1968 Chevrolet owned by the UNIVERSITY OF NEVADA after having gone to Sacramento to pick up the television parts for the UNIVERSITY.

RESPONSE: Admitted.

7. That at the time of the accident HELMUT KURT BOHM was acting in the course and scope of his employment for the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

8. That at the time of the accident herein in question HELMUT KURT BOHM was operating the 1968 Chevrolet owned by the UNIVERSITY OF NEVADA with the permission of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

9. That on the 13th day of May, 1968, HELMUT KURT BOHM operated the 1968 Chevrolet automobile owned by the UNIVERSITY OF NEVADA on Interstate 80 at a point approximately 300 feet East of Penryn Rock Springs Road in the County of Placer, State of California, in a negligent and careless manner and as a direct and proximate cause of such negligent operation of said vehicle the vehicle struck the automobile in which the plaintiffs were riding causing injuries to them.

RESPONSE: Denied.

DATED: December _____, 1975.

BRONSON, BRONSON & McKINNON

By Ernest B. Lageson
Ernest B. Lageson
Attorneys for Defendants,
UNIVERSITY OF NEVADA, STATE
OF NEVADA, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

DIANE HALL, JOHN M. HALL, JOYCE HALL, minors, by and through their Guardian ad Litem, JOHN C. HALL; JOHN C. HALL, PATRICIA HALL, and ELLA WATSON, individually, Plaintiffs, vs. MATTHEW M. FISHGOLD, as Administrator of the Estate of Helmut Kurt Bohm, Deceased; et al., Defendants.	No. 38505 ORDER CHANGING PLACE OF TRIAL AND TRANSFERRING ACTION TO PROPER COURT IN ANOTHER COUNTY

The motion of plaintiffs for an order changing the place of trial of this action on the ground the convenience of witnesses and the ends of justice would be promoted by the change came on regularly for hearing by the Court on the 22 day of January, 1973. Plaintiffs appeared by counsel Everett P. Rowe, Esq. of the Law Offices of Bostwick & Rowe; defendant appeared by counsel of Law Offices of Bronson, Bronson & McKinnon and by Kern E. Tindall, Esq.

The Court, having considered the declarations under penalty of perjury and other documents in support of and in opposition to the motion, having heard the

arguments of counsel, and being fully advised in the premises, finds as follows:

1. The convenience of witnesses and the ends of justice would be promoted by the change of the place of trial of the action.

The motion ought to be granted.

IT IS ORDERED as follows:

1. The motion is granted, the place of trial of this action is changed from the Superior Court in and for the County of Placer, and the action is transferred to the Superior Court in and for the County of Alameda.

2. Upon payment of the costs and fees, the clerk of this court transfer to the clerk of the court to which the action is ordered transferred all of the pleadings and papers on file relating to the action, together with a certified copy of this order.

3. The costs and fees of such transfer, and of filing the papers anew, be paid by plaintiffs.

DATED: Feb. 27, 1973

RONALD G. CAMERON
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General, hereby certify that on the 14th day of July, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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